

CHAPTER 5: ISSUERS — RISKS AND LIABILITIES

5-1: OVERVIEW OF CHAPTER

This chapter describes the risks and liabilities that an issuer assumes, regardless of pool or loan package type. Additional risks and liabilities, if any, associated with a particular pool or loan package type can be found in Chapters 24 through 32.

This chapter is intended to provide a general outline of the most common types of risks and liabilities that a Ginnie Mae issuer may encounter; it may not, however, identify every item of issuer risk or liability that may arise.

5-2: RISKS AND LIABILITIES

An issuer of Ginnie Mae MBS has obligations that may not be customary for a mortgage servicer in the private sector. Each issuer must be aware of these obligations and make suitable financial arrangements to assure that it has the capacity to cover them.

(A) Issuer Cross-Default

If Ginnie Mae declares the issuer in default under the applicable Guaranty Agreement, Ginnie Mae has the right, without further cause, to declare a default on all of the issuer's pools and loan packages and all of the pools and loan packages of any affiliate of the issuer that has executed a Cross-Default Agreement.

(B) Advances to Pay Security Holders

Under the Ginnie Mae I MBS Program an issuer must pay security holders on time, and under the Ginnie Mae II MBS Program an issuer must make funds available in a timely manner to the CPTA for the payment of security holders, in each case in amounts determined in accordance with Section 15-4 and whether or not the issuer receives mortgagors' payments on time or receives them at all. If pooled loans are delinquent or in foreclosure, issuers must use their own funds to insure that security holders receive principal and interest when due. The issuer may reimburse itself, but only to the extent permitted under the applicable Guaranty Agreement and this Guide, from late mortgagor payments, liquidation proceeds, or FHA, VA, RHS, or PIH insurance or guaranty payments.

An issuer may enter into a Pool Advance Agreement (Appendix VI-1) with the funds custodian that holds the pool or loan package P&I custodial account.

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Section 5-2(B) (continued)

Issuers of securities backed by single family or manufactured home pools or loan packages, or by LS pools containing more than one project loan, may also use excess funds in pool or loan package P&I custodial accounts in lieu of advances from their own funds. Excess funds, however, must be replaced out of the issuer's corporate funds prior to the date when they are required to be passed through to security holders or deposited in a central P&I custodial account. Like all other liabilities of the issuer to Ginnie Mae, this obligation to replace excess funds survives a default by, or termination of an issuer's status as, a Ginnie Mae issuer. (See Section 15-5 for instructions on the use of excess funds and Pool Advance Agreements)

(C) Interest Due Security Holders but not Payable by Mortgagor

An issuer is responsible under the Ginnie Mae I MBS Program for making payments of interest due security holders, and under the Ginnie Mae II MBS Program for providing to the CPTA the funds necessary to make payments of interest due security holders, even if associated interest payments are not required to be paid by the mortgagor on the underlying pooled loan. For example, when a mortgage is prepaid in full in mid-month, the mortgagor pays interest only until the payoff date. Security holders, however, are entitled to interest through the end of the month. The issuer must make up the shortfall from its own funds.

(D) Incorrect Calculation of P&I Payment

If an issuer erroneously reports an RPB that is too low for a pool or loan package and does not correct the report by the fifth business day of the month, it is responsible for making available the funds necessary to make payments of interest and principal to the related security holders in accordance with the reported RPB.

(E) Incorrect Calculation Under APM Program

The issuer is responsible for any losses resulting from its failure to accurately and timely adjust the interest rate or payments due on pooled adjustable rate mortgages.

(F) Violation of Notice Provisions Under APM Program

The issuer is solely liable for any losses sustained by or damages assessed against the issuer for failure to give timely notice of mortgage payment adjustments to mortgagors under the pooled adjustable rate mortgages.

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Section 5-2 (continued)

(G) Losses Associated with Removal of Loan from Pool or Loan Package

To the extent that the remaining principal balance of a mortgage has not been recovered by the issuer at the time of:

- (1) final payment of the mortgage insurance or guaranty claim proceeds or other final disposition of a claim by the insuring or guaranteeing federal agency;
- (2) the withdrawal of a defective loan from the pool; or
- (3) any other complete liquidation or disposition of the mortgage or the mortgaged property (this includes, but is not limited to, completion of foreclosure or any other act by which the mortgage no longer is in its pool or loan package or no longer provides backing for the securities related to that pool or loan package);

the monthly payment to security holders following the month in which an action described in (1), (2), or (3) (whichever comes first) is taken shall include an amount, to be paid from the issuer's own funds, that, with respect to the amount owed on the related securities, will reduce the RPB of the mortgage to zero.

(H) Costs Related to Defective Mortgages (Loan Repurchase or Replacement)

If a single family mortgage or manufactured home loan is found to be defective (see Section 14-8(D)) within four months after the issue date of the securities, the issuer must cure the defect or replace the mortgage or loan in the pool or loan package with a substitute mortgage or loan. The substitute mortgage or loan must satisfy the requirements of Section 14-8(D). After the four-month period, replacement is not allowed, and the issuer must either cure the defect or repurchase the mortgage or loan out of the pool or loan package at par, less the principal payments advanced by the issuer.

In the case of a defective project or construction mortgage, the issuer must cure the defect or repurchase the loan. Replacement is not permitted.

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Section 5-2(H) (continued)

An issuer must receive prior written permission from Ginnie Mae's Office of Customer Service or Office of Multifamily Programs, as appropriate (see Addresses), before replacing or repurchasing a defective loan. (See Sections 18-3(B) and 14-8) A request to repurchase a defective loan must be submitted in accordance with the Form Letter for Loan Repurchase (Appendix VI-2).

(I) Pool and Loan Package Administration Costs

Issuers are responsible for all pool and loan package administration costs including those associated with:

- (1) servicing mortgage loans;
- (2) administering securities;
- (3) processing foreclosures;
- (4) preparing tax-related advice to security holders; and
- (5) preparing and submitting reports and records required by Ginnie Mae.

(J) Advances to Pay Taxes and Insurance

If the mortgagor does not make full and timely payment of amounts required to make payments of taxes and insurance premiums, the issuer must advance its own funds to make the payments when due, either to the escrow custodial account or directly to the taxing authority or insurance company. If payment is made from the escrow custodial account, corporate funds sufficient to cover the amount of the payment must be placed in the escrow custodial account within one business day following the payment.

Tax and insurance funds on deposit for a mortgagor cannot be used for any purpose other than the payment of that mortgagor's taxes and insurance.

(K) Extinguishment

If Ginnie Mae declares a default and extinguishment under the applicable Guaranty Agreement, the issuer forfeits and waives any and all rights to reimbursement or recovery of any advances and expenditures made by the issuer, all such rights of the issuer are extinguished, and Ginnie Mae becomes the absolute owner of such rights, subject only to the unsatisfied rights of the security holders.

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Section 5-2 (continued)

(L) Ginnie Mae Costs, Losses, and Expenses Resulting from Issuer's Default

If Ginnie Mae declares an issuer in default under the applicable Guaranty Agreement, the issuer is liable to Ginnie Mae in accordance with Chapter 23.

(M) Miscellaneous Expenses

An issuer is required to cover the following additional expenses:

- (1) major property losses not covered by insurance;
- (2) losses arising from legal proceedings affecting the property (e.g., condemnation); and
- (3) any other loss or expense if reimbursement is not specifically provided for in this Guide.

